

State Coastal Conservancy
Standards and Practices Governing
Grants for the Acquisition of Conservation Easements
October 5, 2006 DISCUSSION DRAFT

INTRODUCTION

The following are intended to guide Conservancy staff in developing projects for the acquisition of a conservation easement by an entity (“the grantee”) to which the Conservancy has authorized the grant of funds for the acquisition.

GRANT AGREEMENTS AND EASEMENTS

Grant agreements awarding funds for the acquisition of conservation easements and the instrument conveying the conservation easement (“conveyance documents” or “deed of conservation easement”) shall be consistent with the following minimum standards and each must clearly state the purposes of the acquisition. The acquisition purposes should, at a minimum, articulate and be consistent with the relevant purposes and requirements of Division 21 of the Public Resources Code and the funding source(s) used to pay for the acquisition. The resources and conservation values to be protected shall be identified in both the grant agreement and in the deed of conservation easement. [WCB Policy: “Grant Agreements”, p. 1; same, except first sentence deleted and other minor non-substantive changes]

RETENTION OF DOCUMENTS

Approved appraisals, conformed copies of recorded conveyance documents, title reports and title policies, baseline conditions reports, transaction documents, management plans and monitoring reports, as applicable, shall be provided to the Conservancy and retained in the Conservancy offices. [WCB Policy, “Retention of Documents”, page 1; same language]

BASELINE CONDITIONS REPORT

Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the Conservancy, the Executive Officer shall have approved documentation providing detailed information on the condition of the property to be protected. The documentation (Baseline Conditions Report) shall be tailored to the purposes of the grant and the specific conservation values to be protected by the conservation easement. Descriptions of the condition of the property and conservation values should be sufficiently detailed to allow for meaningful future comparisons.

The Baseline Conditions Report must be completed, signed, and certified by the landowner(s) and the grantee by the close of escrow. The certification must confirm that the Baseline Conditions Report is a current and accurate description and representation of the property, the health of its resources and conservation values as of the closing.

The Baseline Conditions Report shall provide a narrative that characterizes the overall general condition of the conservation values protected by the conservation easement. For purposes of baseline documentation, the report must provide descriptions that are clearly defined and sufficiently detailed to allow for meaningful future comparisons and must: (a) describe and document the features and characteristics of the property in relation to the purposes, conservation values, and terms of the conservation easement at the time the conservation easement is granted; (b) describe and document the conservation values and resources to be protected by the conservation easement; (c) contain all information necessary for the grantee to administer, monitor and enforce the conservation easement; and (d) include a copy of the recorded conservation easement. The grant agreement shall specify these minimum requirements for the content of a Baseline Conditions Report.

[WCB Policy "Baseline Conditions Report", p. 2; same language]

MONITORING CONSERVATION EASEMENTS

The grant agreement shall require the grantee to monitor land protected with a conservation easement purchased with Conservancy funds. [WCB Policy, "Monitoring Conservation Values" ; WCB paragraph "IV", first sentence] The deed of conservation easement shall acknowledge the right of the grantee to undertake compliance monitoring and shall establish minimum requirements for monitoring that are consistent with the requirements described below. [This sentence is new – reflects that easement is the vehicle for Conservancy requirements – not the grant agreement exclusively]

Compliance monitoring shall assess compliance with the terms of the conservation easement and note any changes to the property as compared to the Baseline Conditions Report and the prior monitoring report. [WCB Policy, "Monitoring Grants and Conservation Values", WCB paragraph "I"] The grantee shall monitor the property at least annually (or less frequently, if the Conservancy determines that conditions in a specific case do not warrant annual monitoring) to assess compliance with the terms and conditions of the conservation easement, as well as whether the purposes of the conservation easement and the grant agreement are being met. [WCB Policy, "Monitoring Grants and Conservation Values", paragraph "IV", second sentence, with added possible exception for less frequent periodic monitoring]

The grantee shall provide notice to the Executive Officer of any periodic or other monitoring of the protected property and, on request of the Executive Officer, Conservancy staff shall be permitted to accompany the grantee on any monitoring visit. Conservancy staff shall accompany the grantee on periodic or other monitoring to the extent that the Executive Officer determines necessary to assess compliance with the terms, covenants and conditions of the conservation easement and the grant agreement. Where funding for the acquisition of a conservation easement has been provided by one or more other state agencies imposing similar requirements, the Conservancy may accept compliance reports from another such agency in lieu of making its own site visit. [This replaces WCB Policy "Monitoring Grants and Conservation Values", paragraph "V"; the Conservancy is not a land management agency and does not have the capacity to monitor every easement "at least every three years", but retains the right to attend any monitoring visit, as needed]

Prior to the close of escrow for the acquisition of a conservation easement purchased with Conservancy funds, the Executive Officer shall have approved an individualized monitoring plan for the property to be protected. Using the Baseline Conditions Report as a benchmark, the monitoring plan should be adaptive and address the purposes, minimum frequency, timing and methods of monitoring the property to be carried out by grantee. The monitoring plan is the framework that will guide the preparation for and implementation of the grantee's monitoring of the conservation easement. [WCB Policy "Monitoring Grants and Conservation Values", paragraph "II"]

The monitoring plan must be tailored to address the purposes, terms and conditions of the conservation easement and the purposes of grant. The grant agreement and the deed of conservation easement shall describe the minimum requirements for a monitoring plan and describe a process for amending the plan, as necessary, over time. [WCB Policy "Monitoring Grants and Conservation Values", paragraph "III"]

The grantee shall provide a written report of its monitoring activities and the results of such monitoring to the Conservancy in accordance with the approved monitoring plan. The monitoring plan shall document and describe the monitoring activities in a manner that demonstrates the monitoring was conducted in accordance with the approved monitoring plan. [WCB Policy "Monitoring Grants and Conservation Values", paragraph "IV", third and fourth paragraphs]

ESSENTIAL PROVISIONS OF CONSERVATION EASEMENTS

[Except as noted below, this is Conservancy-specific language. It is derived from and required by the Conservancy enabling legislation, PRC Section 31116(c), and/or by the language of most recent bond act appropriations to the Conservancy] The deed of conservation easement for any acquisition funded by the Conservancy should include the following essential provisions:

1. The deed of conservation easement shall contain language that prohibits its amendment, transfer or use as security for any debt, without the approval of the

Executive Officer. (The Executive Officer shall approve any such amendment, transfer or use only if the acquisition purposes and conservation values would not be impaired as a result.) [This imposes the Conservancy-specific requirement of approval for an easement amendment and for use of the easement as security, but also sets forth the requirement contained in WCB Policy, "Easement Transfers and Extinguishment, paragraph "I" for approval of easement transfer]

2. No use of property subject to the conservation easement that is inconsistent with the acquisition purposes shall be permitted.
3. The conservation easement shall continue as a servitude running in perpetuity with the real property. (There shall be no provision in a conservation easement pursuant to which the landowner and the easement holder may voluntarily extinguish the conservation easement. Conservation easements whether in whole or in part, may only be extinguished through appropriate legal proceedings (e.g., eminent domain).) [This is parallel to the requirement contained in WCB Policy, "Easement Transfers and Extinguishment, paragraph "II" that prohibits voluntary termination of the easement]
4. If all or part of the property subject to the conservation easement is taken in the exercise of eminent domain, and if the grantee is entitled to receive any proceeds, whether by agreement or court order, for the public taking of the conservation easement, the grantee shall provide to the Conservancy a share of the proceeds proportionate to the Conservancy's contribution towards the purchase price of the conservation easement.
5. If the easement holder should abandon the conservation easement or cease to exist (without first transferring its interest to another entity qualified to hold conservation easements and approved by the Executive Officer), or if any of the essential terms above are violated, then all of the easement holder's right, title and interest in the conservation easement shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon recordation of a certificate of acceptance of the conservation easement following approval by the Conservancy and the Department of General Services and/or the State Public Works Board, if required by law. However, the State, through the Executive Officer of the Conservancy, or its successor, may designate another public agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State. [This is the mechanism, specified by PRC Section 31116(c) and by most of the recent appropriations to the Conservancy, by which the Conservancy must enforce an easement violation. It is an alternative, but equivalent and effective enforcement mechanism, to the third party enforcement remedy required by WCB Policy "Default and Remedies"]